IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

RSA.No. 37 of 2007()

AS.110/2005 of ADDL. DISTRICT COURT, N.PARAVUR
OS.284/2002 of MUNSIFF COURT,ALUVA

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APPELLANT/APPELLANT/PLAINTIFF:

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1. K.O. GEORGE, AGED 57,
S/O. KIZHAKKAMPARAYIL OUSEPH, MAZHUVANNOOR KARA, IRAPURAM VILLAGE, KUNNATHUNADU TALUK,NOW RESIDING AT IX/161(1), KIZHAKKUMPARAYIL, MUNCIPAL COLONY ROAD, NEAR WATER WORKS, ALUVA-1.

2. V.P. SARA, W/O. K.O. GEORGE -DO-.

BY ADV. SRI.V.K.GOPALAKRISHNA PILLAI
SRI.GOPAKUMAR.G.

RESPONDENT/RESPONDENT/DEFENDANT:

SIVANANDAN, AGED 58,
S/O. KURULAYATH GOPALAN, ALUVA KARA,ALUVA VILLAGE, ALUVA TALUK, SOUTH JUNCTION,COCHIN-16,NOW RESIDING AT IX/161, KURULAYATH HOUSE, MUNCIPAL COLONY ROAD, NEAR WATER WORKS, ALUVA-1.

BY //

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 08/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

R.S.A.NO. 37 OF 2007

Dated 8th March 2007

J U D G M E N T

Plaintiffs in O.S.284/02 on the file of Munsiff court, Aluva are the appellants. Defendant therein is respondent. Appellants filed the suit seeking a decree for fixation of boundary and for recovery of possession of the property. Appellants are husband and wife. Appellants are contending that under Exts.A1 and A2 sale deeds executed by Alexander Mathew, they have title to the plaint A and B schedule properties and under Ext.A3 sale deed respondent has title to C schedule property and respondent constructed a compound wall encroaching a portion of their property and therefore boundaries are to be fixed and property in illegal possession of respondent is to be recovered. Respondent in the written statement disputed the plaint allegations and contended that compound wall was constructed in 1992 and there was no dispute with regard to boundary at that time and no portion of property of appellants is

in his possession and there is no need to fix boundary as properties are specifically demarcated and enhanced by compound wall. Learned Munsiff appointed a Commissioner and Commissioner submitted Ext.C1 report and Ext.C1(a) plan demarcating the properties covered under Exts.A1 to A3 in Ext.C1(a) plan. Learned Munsiff on the evidence of first appellant as PW1 and Commissioner as PW2 and Exts.C1 and C1(a) found that Commissioner has demarcated the properties correctly in Ext.C1(a) plan and compound walls were constructed within the boundary of respondent and therefore dismissed the suit. Appellants challenged the decree and judgment before Additional District court, North Paravur in A.S.110/05. Learned District Judge on re-appreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in this second appeal.

2. Learned counsel appearing for appellants was heard.

3. Arguments of learned counsel appearing for appellants was that courts below did not properly appreciate the evidence and failed to note that respondent is in fact in possession of excess of land

than what was covered under Ext.A3 and therefore it should have been found that Commissioner has not properly demarcated the boundaries. It was also argued that Exts.A1 and A2 provides a way which the Commissioner could not identify and included that way as part of the property covered under Exts.A1 and A2 and hence courts below should not have accepted the report.

4. On hearing learned counsel appearing for appellants, I do not find any substantial question of law involved in the appeal. Commissioner has demarcated the property with reference to boundaries as seen in Exts.A1 to A3. Property covered under Ext.A3 lies to the west of the property covered under Ext.A1. To its east is the property covered under Ext.A1. Though learned counsel appearing for appellants vehemently argued that Commissioner did not identify the way provided under Exts.A1 and A2 and therefore identification made by Commissioner should not have been accepted, evidence establish that there was no such way in the property. Commissioner has correctly identified the property and demarcated it in Ext.C1(a). In view of the existing compound wall is on the demarcating boundary Ext.A3 property, courts below rightly dismissed

the suit. There is no merit in the appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.